



Houston County Schools

404 West Washington St.

P.O. Drawer 1688

Dothan, AL 36302

(334) 792-8331

Tim Pitchford, Superintendent

November 12, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

CC Docket No. 96-45 and **CC Docket No. 02-6**

Subject: Request for Review/Appeal of the Universal Service Administrative Company (USAC) Decisions

References (USAC Documents/Decision):

1. Funding Year 2009, FCC Form 471 Application Number 650947, FRNs 1786824 and 1786841
 - a. Funding Commitment Decision Letter (FCDL) Denials, dated September 15, 2010 (Attachment 1)
 - b. USAC Schools and Libraries Division Appeal Decision, dated October 28, 2010 (Attachment 2)
2. Funding Year 2010, FCC Form 471 Application Number 722005, FRNs 1957944 and 1957954
 - a. Funding Commitment Decision Letter (FCDL) Denials, dated October 6, 2010 (Attachment 3)

To Whom It May Concern;

Houston County School District (HCSD) respectfully appeals and requests the FCC review the funding denial decisions made by the Universal Service Administrative Company (USAC) for Funding Year 2009 and Funding Year 2010 (see referenced documents, Attachments 1 – 3) related to applications for services provided by Trillion Partners, Inc. We request the FCC assess the basis of USAC's denial decisions, the information provided here, and reverse USAC's denial decisions and fund the Houston County School District's 2009 and 2010 applications cited in this appeal.

Applicant Name: Houston County School District
Billed Entity Number: 128110

Funding Year 2009:
Form 471 Application Number: 650947
Funding Request Numbers: 1786824 and 1786841

Funding Year 2010:

Form 471 Application Number: 722005
Funding Request Numbers: 1957944 and 1957954

Contact Information:

Name: Robert A. (Bob) Blalock
Address: Houston County School District
404 W. Washington St.
Dothan, Alabama 36301
Phone: (334) 792-8331
Fax: (334) 792-1016
Email: bblalock@hcboe.us

Introduction

Houston County School District disagrees with the USAC's denial decisions on our Funding Year 2009 and 2010 applications (Attachments 1 & 3) for Wide Area Network (WAN) and Internet services provided by Trillion Partners, Inc. Houston County School District personnel complied with the State of Alabama's Code for receiving meals which was the only clear guidance available at that time and we did not engage in any activity that prevented a fair and open competitive bidding process. USAC has alleged that HCSD did not conduct a fair and open competitive bid process free from conflicts of interest. However, they failed to demonstrate this in their review. The sole basis of USAC's allegations was that Houston County School District employees accepted meals from the vendor: meals that complied with the gift restrictions outlined in the Code of Alabama (see Attachment 4 & 5), the only clear guidance available at that time. USAC did *not* identify or cite any other inappropriate conversations, exchange of information, inappropriate relationships, or anything else used in their determination that a fair and open competitive bidding process did not occur. In fact, USAC was presumptive in its interpretation of the FCC's gift policy as illustrated by ambiguous guidance that was available to applicants at the time the purported violations occurred. Furthermore, USAC has been unable to cite in any FCC Code, Orders, or other regulations that would cause any reasonable person to conclude that our compliance with the applicable state laws for receiving meals did not apply in this case. We assert that Houston County School District personnel complied with the State of Alabama's Code for receiving meals which was the only legitimate guidance available on the issue at the time of the proposed violations and we did *not* engage in any other activity that prevented a fair and open competitive bid process. Therefore, we request the FCC reverse USAC's denial decisions and fund HCSD's 2009 and 2010 applications for WAN and Internet services.

Background

During USAC's review of Trillion Partners, Inc., in July 2009, Houston County School District provided information to USAC concerning funding year 2004 - 2009 district applications for Trillion services. In our response, we openly acknowledged receiving lunch from a Trillion representative; once in 2008 and once in 2009, the actual dates were unknown. The amount of both of these lunches was estimated at

\$25.00 (for 2 people) and \$35.00 (for 3 people); both within the \$100 per person, \$250 per year, limit restrictions outlined by The Code of Alabama. Additionally, these lunches occurred during a period where Trillion Partners was providing the current contracted WAN and Internet services to HCSD under an existing contract. The visits/meetings and any discussions that occurred were related to the receipt of current services since management and administration of these services was an ongoing activity necessary to ensure the contracted services were being delivered as required (i.e. Was the district experiencing any problems with the network?; Were they receiving appropriate responses when problems did occur?; Were there any other problems such as invoicing, etc. that needed to be addressed?, etc.). At no time did HCSD personnel provide any information to Trillion that was not related to the receipt of current services under the existing contract.

Funding Year 2009 Denial Activity:

Nearly a year later, 6/3/10, USAC notified HCSD that they intended to deny the Funding Year 2009 471 Application 650947, FRNs 1786841 and 1786824 and 471 Application 662664, FRN 1809620 in which they referenced a January 6, 2009 meal that had been identified from their review of documentation submitted by Trillion (see Attachment 6). However, after conducting our own research, we were able to confirm and provide USAC with information that no such meal with HCSD personnel had occurred (see Attachment 7). USAC subsequently provided a revision to the 6/3/10 letter dated 6/18/10 (see Attachment 8) that identified the following meals; all except one had been identified previously:

1. *Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34 (previously identified in USAC's 6/3/10 letter) - This meal was not provided to HCSD personnel.*
2. *Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren*
3. *Unknown date and location in 2008 at a value of Approximately \$25 (Bob Blalock and David Sewell) (previously identified by HCSD July 2009 response to USAC)*
4. *Unknown date and location in 2009 at a value of Approximately \$35 (Bob Blalock, David Sewell and Ken Fondren) (previously identified by HCSD July 2009 response to USAC)*

As previously noted, the January 6, 2009 meal was not provided to HCSD personnel and the 2008 and 2009 meals and visits were related to the contracted services site visits previously identified by HCSD to USAC. The November 15, 2007 meal identified by USAC from Trillion's documentation was a meal that was provided to all attendees as part of a Voice over Internet Protocol (VoIP) demonstration which was attended by a number of other districts and for which HCSD was only one of the several districts that attended. Again, the cost of this meal was well within the restrictions outlined by the Code of Alabama for the receipt of gifts/meals. The demonstration was for VoIP products where the HCSD was conducting market research on these and similar voice products. It is important to note that USAC has previously advised that product demonstrations are acceptable for applicants to collect product information and knowledge. This information was documented as recently as the 2010 Schools & Libraries Fall Applicant Training, Program Compliance presentation (see Attachment 9). Even though the district currently had a Request For Proposal (RFP) and 470 posted for WAN and Internet services, the

research being conducted on the VoIP products and services was not at all related to or included in the WAN and Internet services being sought at this time. In fact, this demonstration was part of research on VoIP products that had been ongoing for a number of years and did not result in the district bidding the VoIP services out until the following year. This was explained in our 7/5/10 response to USAC (see Attachment 10).

On 9/15/10 USAC issued a Funding Commitment Decision Letter denying 2009 funding for FRNs 1786824 and 1786841 (WAN and Internet Services) (see Attachment 1) and a funding approval for FRN 1809620 (VoIP Services). The following reason for the denials was given:

"This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied."

Again, the focus of the denial is on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama. No other documentation or instances were questioned by USAC or cited in either their letters or their denial remarks to support the assertion that HCSD did not conduct a competitive bidding process that was fair and open.

Houston County Board of Education's attorney reviewed state competitive bidding practices and issued an opinion on whether a violation of the Alabama bid law occurred or whether the acceptance of meals violated the HCSD policy or Alabama law. He concluded that no violation occurred (see Attachment 11). Since this letter was provided after the FCDL was issued which denied these applications, USAC treated the attorney's letter as an appeal even though the letter was not sent to the appropriate section, did not contain the subject or words "Letter of Appeal" and did not mention "appeal." Because of this the district was issued an Administrator's Decision on Appeal – Funding Year 2009-2010 denying an appeal by HCSD for the 2009 applications that had not even been filed (Attachment 2). The following denial explanation was provided:

"USAC determined that the documentation provided during Initial review indicated that a fair and open competitive bidding process free from conflicts of interest was not conducted. When gifts, meals, gratuities and/or entertainment are accepted from the selected service provider prior to and throughout the applicant's contractual relationship with the selected service provider, it undermines the framework of the competitive bidding process. As is noted on USAC's website, <http://www.usac.org/sl/applicants/step03/run-open-faircompetition.aspx>, "the competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process

- such as information shared with one bidder but not with others- and that all bidders know what is required of them." "The applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition." Based on the documentation on record, USAC supports the decision to deny this funding request since the applicant failed to ensure an open and fair competitive bidding process. You have failed to provide evidence that USAC erred in its original decision that the applicant violated this program's competitive bidding rules. Consequently, the appeal is denied."

Again, the focus of the denial is was on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama. USAC cites only the meals received as the reason why HCSD failed to conduct a fair and open competitive bidding process. They imply through reference to the specific language in the guidance that information was shared or that an inappropriate relationship existed as a result of receiving the meals, however, in their review of our documentation, they did not identify or cite any documentation or instances showing that any information was shared or where a relationship other than that of customer and service provider existed.

Funding Year 2010 Denial Activity:

On 9/13/10 USAC notified HCSD that they intended to deny the Funding Year 2010 471 Application 722005, FRNs 1957944 and 1957954 in which they referenced the November 15, 2007 meal that had been provided as part of the VoIP demonstration (see Attachment 12) and was previously explained in our 7/5/10 response for the 2009 applications. Again, this meal was within the gift limitations outlined by the Code of Alabama and was part of a market research activity for VoIP products and services that were not at all related to the WAN and Internet Services that were subsequently denied. We provided this information to USAC with a more detailed explanation and statements made by the HCSD attendees in our 9/24/10 response (see Attachment 13).

On 10/6/10 USAC issued a Funding Commitment Decision Letter denying 2010 funding for FRNs 1957944 and 1957954 (WAN and Internet Services) (see Attachment 3) and a funding approval for FRN 1957964 (VoIP Services). The same denial reasons were given as those provided for the 2009 applications.

Additional Supporting Information

USAC consistently maintains in their denial decisions that the district was "offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open." However, the only things received by district personnel were meals that were well within the limits outlined by the Code of Alabama. USAC has presumed a conflict of interest based on meals received by district personnel that are permitted by the state and that were not explicitly excluded by FCC rules and guidance for the E-rate program available at the time of the purported infractions. In the absence of anything indicating HCSD engaged in any inappropriate behavior, it is not reasonable to believe that meals of no value provided as part of routine business meetings would influence anyone to violate competitive bidding rules thereby risking funding denials and possible prosecution. Additionally, it is worth noting that the contract was awarded by the Houston

County Board of Education and none of the Board members received any of the referenced meals.

According to local policy and the Code of Alabama 1975, Code of Ethics for Public Officials, Employees, etc, (see Attachments 4, 5 & 14), no Houston County Board of Education staff member shall solicit or accept a gift/thing of value when such a gift could be construed to be a result of or a precondition to business transactions between the parties. No violation of this mandate occurred. The meals were provided without precondition as part of business meetings related to current contracted services and part of the Voice over IP demonstration as a hospitality to *all attendees*, which included personnel from other organizations. Additionally, nothing of value was provided to HCSD personnel. According to the Code of Alabama's definition of a "thing of value", hospitalities such as meals of a reasonable value as well as inexpensive gifts of \$100 value and aggregate value of \$250 per calendar year are **not considered to be a "thing of value" under Alabama law**. Therefore, as stated previously, no HCSD employee violated state or local policy. This was confirmed by our Board attorney who reviewed the Alabama Code as well as board policy and interviewed all parties and determined that nothing occurred that would have tainted the competitive bidding process (see Attachment 11).

The Sixth Report and Order released by the FCC on September 28, 2010 makes the gift rules under the E-rate program consistent with the gift rules applicable to federal agencies which finally provides measurable restrictions of \$20 or less not to exceed \$50 per employee from any one source per calendar year, replacing the vague and ambiguous guidance previously available on this issue. However, it is not reasonable for this policy to be applied retroactively since applicants could not comply with guidance that was not available at the time the purported violations occurred. In fact, prior to the release of the Sixth Report and Order we were unable to locate any FCC rules, regulations, orders, etc., that were in place at the time the purported violations occurred. When USAC was asked for guidance on receiving meals/gifts from service providers, they directed us to the certifications in the Form 470 and 471 where the applicant certifies on both the Form 470 and 471 "...that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s) or any representative... in connection with this request for services..." (see Attachment 15). How does the FCC define a "thing of value"? Was there any published FCC regulation or USAC guidance available that provided a definition for a "thing of value"? Furthermore, the certification does not require the applicant to certify that they received "nothing"; therefore, it cannot be presumed that all things constitute a "thing of value." USAC also directed us to the guidance concerning free services and running a fair and open competitive bidding process located on their website which is both general and ambiguous (see Attachments 16, 17 and 18). Neither of these explicitly state any rules or guidance on the acceptance of meals, gifts, etc. In fact, they do not mention gifts or meals. The referenced guidance does not provide sufficient detail for anyone to *act upon* related to the receipt of meals or gifts. USAC also cited FCC 10-83, the Notice of Proposed Rulemaking, dated May 20, 2010, *a set of proposed rules*, when we requested they provide the FCC rules or USAC guidance they used to support the denial decisions so that we could properly appeal the decisions. The proposed rules they cited had not even been accepted and published as final at the time of our inquiry, let alone at the time the purported violations occurred, yet USAC felt they were relevant

to their decision to deny these applications. This is an unreasonable position.

In the absence of any FCC regulation with explicit guidance on accepting meals and gifts, we deferred to state law (Attachments 4 & 5) which does **not** consider meals of a reasonable value (less than \$100) to be a "thing of value". Therefore, when we certified on the Form 470 and 471s that we had not received anything of value or a promise of anything of value, we were honest in our certification. The fact that the district followed Alabama's state and local procurement laws in these instances is consistent with USAC/SLD's guidance for opening a competitive bidding process located on their website (see Attachment 19) which instructs applicants to *"Follow all applicable state and local procurement laws"* which is exactly what HCSD has done. In USAC/SLD's 2009 Fall Applicants Training they also directed applicants to *"Know and follow state and local rules regarding acceptance of gifts (limits, timeframes, etc)"* (see Attachment 20). Even though the guidance was very explicit concerning following state and local policies, the information provided was not explicit when it came to providing the FCC's rules concerning gifts.

Finally, Houston County School District conducted a fair and open competitive bid activity that was not violated by the acceptance of meals. HCSD personnel did **not** share any information at any time with Trillion or any other vendor that was not made available to all vendors. This is further supported by the fact that USAC's review of HCSD's and Trillion's documentation did not identify or cite any information or instances showing that any information was inappropriately shared or where a relationship other than that of customer and service provider existed.

Again, the focus of the denial is on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama and complied with the guidance available at that time. No other information or instances were questioned by USAC or cited in either their letters or their denial remarks to support the assertion that HCSD did not conduct a competitive bidding process that was fair and open.

Summary:

The information we've provided demonstrates that Houston County School District conducted a fair and open competitive bid process free of conflicts of interest because district personnel complied with the state's policy for accepting meals which was the prevailing policy available at that time. Furthermore, as defined by the Code of Alabama, the district employees received nothing of value that would constitute a violation of the competitive bidding process. Since the meals were the basis of the denials and Houston County School District did not engage in and USAC did **not** identify any inappropriate conversations, exchange of information, inappropriate relationships, or anything else from their *extensive review* that was used in their determination that a fair and open competitive bidding process did not occur, we request the FCC reverse USAC's denial decisions and fund HCSD's Funding Year 2009 and 2010 applications (FRNs 1786841, 1786824, 1957944, and 1957954).

Thank you for your consideration. We greatly appreciate the opportunity to participate in the E-rate program. If you have any questions please contact Bob Blalock at (334) 792-8331.

Sincerely,



Robert A. (Bob) Blalock
District Technology Coordinator
Voice: (334) 792-8331
Fax: (334) 792-1016
bblalock@hcboe.us

Attachments (20):

1. USAC Schools and Libraries Division, Funding Commitment Letter (Funding Year 2009: 07/01/2009 – 6/30/2010), Form 471 Application Number 650947, Dated 9/15/10
2. USAC Schools and Libraries Division, Administrator's Decision on Appeal – Funding Year 2009-2010, Form 471 Application Number 650947, Dated 10/28/10
3. USAC Schools and Libraries Division, Funding Commitment Letter (Funding Year 2010: 07/01/2010 – 6/30/2011), Form 471 Application Number 722005, Dated 10/6/10
4. Code of Alabama, Section 36-25-7, Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.
5. Code of Alabama, Section 36-25-1, Definitions
6. USAC Schools and Libraries Division Request Letter, Subject: Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824, and 471# 662664, FRN 1809620, Dated 6/3/10
7. Houston County Schools Letter, Re: Information Regarding Meal Purchased by Trillion Partners, Inc. (with 1 Attachment), Dated 6/6/10
8. USAC Schools and Libraries Division Request Letter (Revised), Subject: Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824, and 471# 662664, FRN 1809620, Dated 6/18/10
9. USAC Schools and Libraries Division, 2010 Fall Training Presentation Extract, Program Compliance (Slide 12)
10. Houston County Schools Letter, Re: Response to Denial Letter dated June 18, 2010 (with 4 Attachments), Dated 7/5/10
11. Hardwick, Hause, Segrest & Walding Letter, Re: Houston County Board of Education, Dothan, Alabama, Application Numbers FY2009 Form 471# 650947, FRNs 1786841, 1786824 and 471# 662664, FRN 1809620
12. USAC Schools and Libraries Division Request Letter (Revised), Subject: Application Number(s): FY2010 Form 471# 722005, FRNs 1957944 and 1957954, Dated 9/13/10
13. Houston County Schools Letter, Re: Response to Denial Letter dated 9/13/10, Subject: FY2010 Form 471# 722005, FRNs 1957944 and 1957954 (with 5 Attachments), Dated 9/24/10
14. Houston County Board of Education Policy, 6.14.1 – Gifts
15. USAC Schools and Libraries Division Email, Subject: Initial Contact, case# 22-078241, Dated

6/21/10

16. USAC Schools and Libraries Division Website, Step 6: Free Services Advisory Guidance
17. USAC Schools and Libraries Division Email, Subject: (FCC Reg guidance concerning meals, gifts, etc.) Initial Contact, case# 22-109410, Dated 9/17/10
18. USAC Schools and Libraries Division Website, Step 3: Run an Open and Fair Competitive Bidding Process
19. USAC Schools and Libraries Division Website, Step 3: Open a Competitive Bidding Process
20. USAC Schools and Libraries Division, 2009 Fall Training Presentation Extract, Issues in Competitive Bidding (Slides 17 & 18)



Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
 (Funding Year 2009: 07/01/2009 - 06/30/2010)

September 15, 2010

Bob Blalock
 HOUSTON COUNTY BOARD OF ED
 404 W WASHINGTON ST
 DOTHAN, AL 36301

Re: Form 471 Application Number: 650947
Billed Entity Number (BEN): 128110
Billed Entity FCC RN: 0012235339
Applicant's Form Identifier: Yr12WAN&IA

Thank you for your Funding Year 2009 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$86,038.32 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - Form 471 Application Number 650947 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2009," AND
 - The exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

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FUNDING COMMITMENT REPORT
Billed Entity Name: HOUSTON COUNTY BOARD OF ED
BEN: 128110
Funding Year: 2009

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 650947
Funding Request Number: 1786824
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 379420000635182
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: SA-091107-000815
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 01/29/2008
Contract Expiration Date: 06/30/2011
Shared Worksheet Number: 1043666
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$112,068.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$112,068.00
Discount Percentage Approved by the USAC: 74%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.
FCDL Date: 09/15/2010
Wave Number: 066
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

FUNDING COMMITMENT REPORT
Billed Entity Name: HOUSTON COUNTY BOARD OF ED
BEN: 128110
Funding Year: 2009

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 650947
Funding Request Number: 1786841
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 379420000635182
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: SA-091107-000815
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 01/29/2008
Contract Expiration Date: 06/30/2011
Shared Worksheet Number: 1043666
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$4,200.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$4,200.00
Discount Percentage Approved by the USAC: 74%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.

FCDL Date: 09/15/2010

Wave Number: 066

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/201



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2009-2010

October 28, 2010

Jere C. Segrest
Hardwick, Hause, Segrest & Walding
P.O. Box 1469
Dothan, AL 36302

Re: Applicant Name: HOUSTON COUNTY BOARD OF ED
Billed Entity Number: 128110
Form 471 Application Number: 650947
Funding Request Number(s): 1786824, 1786841
Your Correspondence Dated: October 13, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2009 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1786824, 1786841
Decision on Appeal: **Denied**
Explanation:

- USAC determined that the documentation provided during Initial review indicated that a fair and open competitive bidding process free from conflicts of interest was not conducted. When gifts, meals, gratuities and/or entertainment are accepted from the selected service provider prior to and throughout the applicant's contractual relationship with the selected service provider, it undermines the framework of the competitive bidding process. As is noted on USAC's website, <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>, "the competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process - such as information shared with one bidder but not with others - and that all bidders know what is required of them." "The applicant should not have a

relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition." Based on the documentation on record, USAC supports the decision to deny this funding request since the applicant failed to ensure an open and fair competitive bidding process. You have failed to provide evidence that USAC erred in its original decision that the applicant violated this program's competitive bidding rules. Consequently, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
 (Funding Year 2010: 07/01/2010 - 06/30/2011)

October 6, 2010

Bob Blalock
 HOUSTON COUNTY BOARD OF ED
 404 W WASHINGTON ST
 DOTHAN, AL 36301

Re: Form 471 Application Number: 722005
 Billed Entity Number (BEN): 128110
 Billed Entity FCC RN: 0012235339
 Applicant's Form Identifier: Y13 WAN&IA&VoIP

Thank you for your Funding Year 2010 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$123,818.75 is "Approved."
- The amount, \$84,519.19 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - Form 471 Application Number 722005 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2010," AND

- The exact text or the decision that you are appealing.
- 3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
- 4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
- 5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Billed Entity Name: HOUSTON COUNTY BOARD OF ED
BEN: 128110
Funding Year: 2010

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 722005
Funding Request Number: 1957944
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 379420000635182
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: SA-091107-000815
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 01/29/2008
Contract Expiration Date: 06/30/2011
Shared Worksheet Number: 1173087
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$111,597.36
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$111,597.36
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied.
FCDL Date: 10/06/2010
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

FUNDING COMMITMENT REPORT
Billed Entity Name: HOUSTON COUNTY BOARD OF ED
BEN: 128110
Funding Year: 2010

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 722005
Funding Request Number: 1957954
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 379420000635182
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: SA-091107-000815
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 01/29/2008
Contract Expiration Date: 06/30/2011
Shared Worksheet Number: 1173087
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$4,182.36
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$4,182.36
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied.
FCDL Date: 10/06/2010
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/20

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FUNDING COMMITMENT REPORT
Billed Entity Name: HOUSTON COUNTY BOARD OF ED
BEN: 128110
Funding Year: 2010

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 722005
Funding Request Number: 1957964
Funding Status: Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 361360000695126
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: SA-060208-001054
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 01/16/2009
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1173087
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$169,614.72
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$169,614.72
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$123,818.75 - FRN approved as submitted

FCDL Date: 10/06/2010

Wave Number: 020

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

Title 1 Determination of amount of injury or damage and entry of award for payment of damages generally.	<u>Section 36-25-7</u> Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.
Title 2 AGRICULTURE.	(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.
Title 3 ANIMALS.	(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.
Title 4 AVIATION.	(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.
Title 5 BANKS AND FINANCIAL INSTITUTIONS.	(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.
Title 6 CIVIL PRACTICE.	<i>(Acts 1973, No. 1056, p. 1699, &sect;5; Acts 1975, No. 130, p. 603, &sect;1; Acts 1995, No. 95-194, p. 269, &sect;1.)</i>
Title 7 COMMERCIAL CODE.	
Title 8 COMMERCIAL LAW AND CONSUMER PROTECTION.	
Title 9 CONSERVATION AND NATURAL RESOURCES.	
Title 10 CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS.	
Title 11 COUNTIES AND MUNICIPAL CORPORATIONS.	
Title 12 COURTS.	
Title 13A CRIMINAL CODE.	
Title 14 CRIMINAL CORRECTIONAL	

Section 36-25-1**Definitions.**

Whenever used in this chapter, the following words and terms shall have the following meanings:

- (1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
- (2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
- (3) CANDIDATE. This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.
- (4) COMMISSION. The State Ethics Commission.
- (5) COMPLAINT. Written allegation or allegations that a violation of this chapter has occurred.
- (6) COMPLAINANT. A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.
- (7) CONFIDENTIAL INFORMATION. A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.
- (8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:
 - a. A loan or financial transaction made or conducted in the ordinary course of business.
 - b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.
 - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.

(14) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(15) LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

(16) LEGISLATIVE BODY. The Senate of Alabama, the House of Representatives of Alabama, a county commission, city council, city commission, town council, or municipal council or commission, and any committee or subcommittee thereof.

(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying.

(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.
4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. A member of a legislative body on a matter which involves that person's official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
3. Reporters and editors while pursuing normal reportorial and editorial duties.
4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.
5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.
6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

(19) MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives an economic gain in an amount less than two hundred fifty dollars (\$250) or the governmental entity has an economic loss of less than two hundred fifty dollars (\$250).

(20) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(21) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist.

(22) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.

(25) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

(26) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(27) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(28) RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

(29) STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

(30) SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. Campaign contribution.

2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.

3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective

household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.

6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of a personal gift made to a public official or public employee from a spouse, intended spouse, dependent, adult child, sibling, parent, grandparent, uncle, aunt, nephews, nieces or cousins of the public official or public employee, except as otherwise provided by law.

d. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(32) VALUE. The fair market price of a like item if purchased by a private citizen.

(Acts 1973, No. 1056, p. 1699, §2; Acts 1975, No. 130, p. 603, §1; Acts 1979, No. 79-698, p. 1241, § 1; Acts 1982, No. 82-429, p. 677, § 1; Acts 1986, No. 86-321, p. 475, §1; Acts 1995, No. 95-194, p. 269, §1; Acts 1997, No. 97-651, p. 1217, §1.)



Date: June 3, 2010

Bob Blalock
HOUSTON COUNTY BOARD OF ED
Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824,
and 1809620

Response Due Date: June 18, 2010

We are in the process of reviewing your funding requests with Trillion Partners, Inc. to ensure that they are, in compliance with the rules of the Universal Service program.

Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1786841, 1786824, and 1809620 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of a meal, immediately prior to the process you conducted to select a service to provide these goods and services from the service provider you selected. This gift show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gift was in the form of a meal at Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34.

You have 15 days to respond to this request. Your response is due by the close of business June 18, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Pina Portanova
USAC, Schools and Libraries Division
Phone: 973-581-5016
Fax: 973-599-6552
E-mail: pportan@sl.universalservice.org

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl



Houston County Schools

404 West Washington St.
Dothan, AL 36301
(334) 792-8331

ATTACHMENT 5-7
(with 1 Attachment)

June 6, 2010

Tim Pitchford, Superintendent

Pina Portanova
USAC, Schools and Libraries Division
E-mail: pportan@sl.universalservice.org

RE: Information Regarding Meal Purchased By Trillion Partners, Inc.

Pina,

I have researched the question of a meal that was to have been provided to Houston County Board of Education employees from Trillion Partners, Inc. and have found that no meal was purchased for any Houston County Board of Education employee by Trillion Partners, Inc. I have attached a letter from Angela Pierce, Chief Financial Officer of Trillion Partners, Inc. that explains the mistake in accounting for the people that had the meal in question. Trillion states that two of their employees were the only people present at the meal in question. I have questioned all the employees here at the Houston County Board of Education and none have received a meal from Trillion.

The three FRNs that are referenced were not in the bid or review process at the time this took place. The FRNs 1786841 and 1786824 are continuation requests of a three year contract that was executed in January 2008. The FRN 1809620 is a contract for VOIP services that was bid, reviewed and accepted in December 2008 but could not be accepted officially until our board met in January 2009. That is the reason that the vendor was selected on January 15, 2009 but all bids and competition took place in November and December of 2008. The bids were opened and reviewed for acceptance on December 9, 2008 but our board did not have an official meeting until January and that is why the selection letter was dated January 15, 2009.

Please, let me know back if you need any further information on this request.

Bob Blalock
Technology Coordinator
Houston County Board of Education



June 7, 2010

Bob Blalock
HOUSTON COUNTY BOARD OF ED

During 2009 USAC requested information regarding any expenses incurred where one of Trillion's customer employees attending a meal with Trillion at Trillion's expense.

As part of Trillion's review process, in response to USAC's request for information regarding meals and entertainment, Trillion took the most conservative position when reviewing any receipts where the Company had only partial information. Regarding the expense in Houston County, AL on January 6, 2009, there were two attendees. Because there was at that time no receipt information available, the Trillion reviewer assumed the meal included one Trillion employees and one Houston County employee. Upon further review, additional queries into the accounting system, and discussion with the sales personnel, it has been confirmed that the two attendees were both employees of Trillion (David Jolly and Chuck Browning) and in fact no Houston County employee attended this meal.

The expense detail for the \$26.34 meal associated with Houston County was provided to USAC in error and should not have been included in the data submitted by Trillion.

Please let me know if you need additional information in your response.

Regards,

Angela Pierce
Chief Financial Officer
Trillion Partners, Inc.



Date: June 18, 2010

Bob Blalock
HOUSTON COUNTY BOARD OF ED
Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824,
and Form 471# 662664, FRN 1809620

Response Due Date: July 5, 2010

Recently you were sent a letter informing you the status of the above referenced FRNs with Trillion Partners, Inc. This letter is a revision to the initial letter dated June 3, 2010 because the initial letter did not contain all of the information and supporting documentation regarding this review. Any documentation that you have submitted to us in response to the initial letter is still under review.

Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1786841, 1786824, and 1809620 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of meals, immediately prior to, during and after the process you conducted to select a service provider to provide these goods and services from the service provider you selected. These gifts show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gifts were in the form of meals:

1. Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34
Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren
2. Unknown date and location in 2008 at a value of Approximately \$25 (Bob Blalock and David Sewell)
3. Unknown date and location in 2009 at a value of Approximately \$35 (Bob Blalock, David Sewell and Ken Fondren)

A copy of supporting documentation is attached. If the entire FRNs should not be denied and you have alternative information, please provide the supporting documentation.

You have 15 days to respond to this request. Your response is due by the close of business July 5, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the

consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Pina Portanova
USAC, Schools and Libraries Division
Phone: 973-581-5016
Fax: 973-599-6552
E-mail: pportan@sl.universalservice.org

EXTRACT



Competitive Bidding

Applicants Involvement

- Applicants **can:**
 - Have pre-bidding discussions
 - Discuss their product offering with SPs
 - Learn about new technologies from SPs
 - Have product demonstrations
 - Encourage and seek vendors to bid
 - Receive **de minimis** gifts
 - Modest refreshments, not offered as a part of a meal
 - Items with little intrinsic value intended **solely** for presentations



Houston County Schools

404 West Washington St.
P.O. Drawer 1688
Dothan, AL 36302
(334) 792-8331

Tim Pitchford, Superintendent

July 5, 2010

Pina Portanova
USAC, Schools and Libraries Division

RE: Response to Denial Letter dated June 18, 2010

I am requesting that the funding for FRNs 1786841, 1786824 and 1809620 be reinstated. I have found no wrong doing on the part of any Houston County Board of Education (HCBOE) employee with regards to these or any other funding request to USAC. I have researched the board policy and the State of Alabama Department of Education policy regarding gifts to employees and found that no HCBOE employee violated any policy during any time period with regards to these funding requests. The local HCBOE policy falls under the policy of the State of Alabama Department of Education. These policies state that any Houston County Board of Education staff member shall not solicit or accept a gift when such a gift could be construed to be a result of or a precondition to business transactions between the parties. The State of Alabama Code states that things of value cannot be accepted for influencing a decision to do business or receive preferential treatment when doing business with Alabama State entities. The Code of Alabama also gives a definition of a thing of value that specifically excludes meals of reasonable value and inexpensive gifts of \$100 value and aggregate value of \$250 per calendar year. I have included copies of documents that verify the codes mentioned here. The Houston County Board of Education employees mentioned below have not violated any of the codes that govern the organization. I have listed the meals that were mentioned in your letter of denial below and responded to each one.

1. Part 1 of 2 Parts: Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34 – This meal was two Trillion Partners employees and did not involve any Houston County Board of Education employee at all.

Part 2 of 2 Parts: Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren. David Sewell and Ken Fondren attended a demonstration by Trillion Partners for Voice Over Internet Protocol that was open to any potential customer. Trillion did provide a lunch meal to all attendees at the presentation. The documentation that USAC included for this event states there were 10 participants for the demonstration. The Houston County Board of Education did have an RFP posted for a Wide Area Network upgrade at the time of this demonstration but the event did not include any information or demonstration of any Wide Area Network equipment, features or pricing. Therefore no Houston County employee violated any fair and open competitive bidding process for the Wide Area Network Upgrade RFP.

2. Unknown date and location in 2008 at a value of Approximately \$25 (Bob Blalock and David Sewell). This was a business lunch meal that was purchased by Trillion on a regular customer visit to the Houston County Board of Education. Houston County Board of Education was asked by USAC to document all dealings with Trillion Partners for a review that USAC was doing of Trillion Partners. I tried to document everything I could for USAC and I wanted to be sure I included any dealing with Trillion Partners. I knew Trillion had taken David Sewell, Ken Fondren and myself to lunch in the past but did not have documentation of the exact dates so I mentioned the year and the approximate value. This business lunch does not violate any Houston County Board of Education or Alabama Department of Education codes or policies.
3. Unknown date and location in 2009 at a value of Approximately \$35 (Bob Blalock, David Sewell, and Ken

Fondren). This was a business lunch meal that was purchased by Trillion on a regular customer visit to the Houston County Board of Education. This is another instance of the request for information from USAC on all dealings with Trillion Partners for a review USAC was doing of Trillion Partners. Once again the meal does not violate any Houston County Board of Education or Alabama Department of Education codes or policies.

I have tried to answer your request for information to the best of my ability and have given details and documents to verify that the Houston County Board of Education employees did not violate any codes, policies or fair and open competitive bidding processes regarding any of the funding requests mentioned above. I respectfully request that the funding request be approved and ask if any further information is needed to please contact me right away.

Please, find attached Houston County Board of Education Policy Code page 6.14.1, Code of Alabama Section 16-1-30, Section 36-25-7, Section 36-25-1 (Definitions with Paragraph 31 – Thing of Value & Paragraph 32 –Value)

Sincerely,



Bob Blalock
Technology Coordinator
Houston County Board of Education
404 West Washington St.
Dothan, AL 36301
334-792-8331 Ext. 120
bblalock@hcboe.us

Houston County Board of Education Policy

CHAPTER 6.00 – HUMAN RESOURCES

GIFTS

6.14.1

- I. Staff members may, at their discretion, present personal gifts to student(s) on special occasions. Houston County School System staff members must exercise good taste and sound professional judgment when giving gifts to students. Gifts provided by staff members to students must not be elaborate or expensive.
- II. Houston County School System staff members shall not solicit or accept a gift, including money, from any source, when such a gift could be construed to be:
 - A. associated with the performance of school-related duties or activities;
 - B. a result of or a precondition to business transactions between the parties;
- III. Gifts of a nominal value on special occasions such as Valentine's Day, birthday, etc., are excluded from this provision.

STATUTORY AUTHORITY:
**CODE OF ALABAMA
16-1-30**
LAW(S) IMPLEMENTED:
**CODE OF ALABAMA
16-11-9, 36-25-1, et al.**
ALABAMA ADMINISTRATIVE PROCEDURE ACT:
HISTORY:
**ADOPTED: _____
REVISION DATE(S): _____
FORMERLY: NEW**

Section 16-1-30**Written educational policies, rules and regulations of local boards of education.**

(a) Definitions. When used in this section, the following words shall have the following meanings:

(1) LOCAL BOARD OF EDUCATION or BOARD OF EDUCATION. Any city or county board of education; the Board of Trustees of the Alabama Institute for Deaf and Blind; the Alabama Youth Services Board in its capacity as the Board of Education for the Youth Services Department District; the Board of Directors of the Alabama School of Fine Arts; and the Board of Directors of the Alabama High School of Mathematics and Science.

(2) CHIEF EXECUTIVE OFFICER. The superintendent of any public county or public city school system; the President of the Alabama Institute for Deaf and Blind; the Superintendent of the Department of Youth Services District; the Executive Director of the Alabama School of Fine Arts; the Executive Director of the Alabama High School of Mathematics and Science.

(3) PROFESSIONAL ORGANIZATION. The employees' local professional organization whose parent organization represents the majority of school employees statewide.

(b) The local board of education shall, upon the written recommendation of the chief executive officer, determine and establish a written educational policy for the board of education and its employees and shall prescribe rules and regulations for the conduct and management of the schools. Before adopting the written policies, the board shall, directly or indirectly through the chief executive officer, consult with the applicable local employees' professional organization. Input by the applicable professional organization shall be made in writing to the chief executive officer. Representatives of the professional organization shall be made known to the chief executive officer in writing by the professional organization's duly elected officers or their representative. The chief executive officer of the board may also consult with professional assistants, principals, employees, and other interested citizens. The written policies, rules, and regulations, so established, adopted, or promulgated shall be made available to all persons affected and employed by the board. Any amendments to the policies, rules, and regulations shall be developed in the same manner and furnished to the affected persons employed by the board within 20 days after adoption.

(Acts 1995, No. 95-121, p. 183, §§2, 3.)

Title 1 Determination of amount of injury or damage and entry of award for payment of damages generally.	<u>Section 36-25-7</u>
Title 2 AGRICULTURE.	Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.
Title 3 ANIMALS.	(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.
Title 4 AVIATION.	(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.
Title 5 BANKS AND FINANCIAL INSTITUTIONS.	(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.
Title 6 CIVIL PRACTICE.	(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.
Title 7 COMMERCIAL CODE.	
Title 8 COMMERCIAL LAW AND CONSUMER PROTECTION.	
Title 9 CONSERVATION AND NATURAL RESOURCES.	<i>(Acts 1973, No. 1056, p. 1699, &sect;5; Acts 1975, No. 130, p. 603, &sect;1; Acts 1995, No. 95-194, p. 269, &sect;1.)</i>
Title 10 CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS.	
Title 11 COUNTIES AND MUNICIPAL CORPORATIONS.	
Title 12 COURTS.	
Title 13A CRIMINAL CODE.	
Title 14 CRIMINAL CORRECTIONAL	

Section 36-25-1**Definitions.**

Whenever used in this chapter, the following words and terms shall have the following meanings:

- (1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
- (2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
- (3) CANDIDATE. This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.
- (4) COMMISSION. The State Ethics Commission.
- (5) COMPLAINT. Written allegation or allegations that a violation of this chapter has occurred.
- (6) COMPLAINANT. A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.
- (7) CONFIDENTIAL INFORMATION. A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.
- (8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:
 - a. A loan or financial transaction made or conducted in the ordinary course of business.
 - b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.
 - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.

(14) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(15) LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

(16) LEGISLATIVE BODY. The Senate of Alabama, the House of Representatives of Alabama, a county commission, city council, city commission, town council, or municipal council or commission, and any committee or subcommittee thereof.

(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying.

(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.
4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. A member of a legislative body on a matter which involves that person's official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
3. Reporters and editors while pursuing normal reportorial and editorial duties.
4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.
5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.
6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

(19) MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives an economic gain in an amount less than two hundred fifty dollars (\$250) or the governmental entity has an economic loss of less than two hundred fifty dollars (\$250).

(20) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(21) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist.

(22) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.

(25) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

(26) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(27) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(28) RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

(29) STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

(30) SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. Campaign contribution.

2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.

3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective

household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.

6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of a personal gift made to a public official or public employee from a spouse, intended spouse, dependent, adult child, sibling, parent, grandparent, uncle, aunt, nephews, nieces or cousins of the public official or public employee, except as otherwise provided by law.

d. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(32) VALUE. The fair market price of a like item if purchased by a private citizen.

(Acts 1973, No. 1056, p. 1699, §2; Acts 1975, No. 130, p. 603, §1; Acts 1979, No. 79-698, p. 1241, § 1; Acts 1982, No. 82-429, p. 677, § 1; Acts 1986, No. 86-321, p. 475, §1; Acts 1995, No. 95-194, p. 269, §1; Acts 1997, No. 97-651, p. 1217, §1.)

COPY

JERE C. SEGREST
KEVIN WALDING

HARDWICK, HAUSE, SEGREST & WALDING

ATTORNEYS AT LAW
212 NORTH LENA STREET
DOTHAN, ALABAMA

MAILING ADDRESS
POST OFFICE BOX 1469
DOTHAN, ALABAMA 36302

W. G. HARDWICK
(1910-1993)

WILLIAM G. HAUSE
(RETIRED - 1991)

PHONE (334) 794-4144
FACSIMILE (334) 671-9377

October 13, 2010

ATTN: Pina Portanova
Universal Service Administrative Company
Schools and Libraries Division
Correspondence Unit
30 Lanidex Plaza West - P. O. Box 685
Parsippany, NJ 07054-0685

**RE: Houston County Board of Education
Dothan, Alabama
Application Numbers FY2009 Form 471# 650947,
FRNs 1786841, 1786824 and 1809620**

Dear Mr. Portanova:

I am an attorney in Houston County, Alabama and have been employed for many years to represent the Houston County Board of Education in all of its legal matters.

Mr. Bob Blalock, with whom you have been corresponding has delivered to me the file involving the Board pertaining to funding requests with Trillian Partners, Inc. and USAC's denial of recent claims on the basis that the Board did not conduct a fair and open competitive bid process free from conflicts of interest.

The basis of your denial is that the employees of the Houston County Board of Education were offered and accepted valuable gifts in the form of meals immediately prior to the process conducted to select a service to provide goods and services from the service provider.

The purpose of this letter is to advise you concerning the Alabama competitive bidding practices and whether any violation of the Alabama bid law occurred or whether the acceptance of meals violated the Houston County Board of Education policy or Alabama law.

ATTN: Pina Portanova
Universal Service Administrative Company
October 13, 2010
Page Two of Three

In forming this opinion I have conducted the following activities:

1. Face to face conference with David Sewell and review of his statement of activities on November 15, 2007.
2. Face to face conference with Ken Fondren and review of his statement of activities on November 15, 2007.
3. Review of Dynamic Strategies, LLC professional services agreement dated July 5, 2010.
4. Review of Code of Alabama, Section 36-25-1, et seq.
5. Review of Code of Alabama, 1975, Section 35-25-7 and Houston County Board of Education Policy 6-14-1-gifts.

It is therefore my considered opinion as a licensed, practicing attorney in Dothan, Houston County, Alabama and representing the Houston County Board of Education since 1976 and practicing law in Alabama for a period in excess of 48 years, that there has been no violation of state competitive bid laws nor a violation of the Houston County Board of Education policy nor any illegal or unlawful practice followed by any employee or by the Houston County Board of Education in accepting lunches as a part of a demonstration provided by vendor Trillian.

Moreover, there are no Alabama or local ethical violations related to the competitive bid process on the part of said employees receiving lunch as a part of said demonstration.

It is my conclusion that it clearly appears that the gifts of meals in this instance was provided as a part of a business meeting conducted for market research where everyone attending the demonstration received a lunch meal as a part of the hospitality to all of the attendants. The dollar amounts of these meals are so small that no one would be influenced in any way by acceptance of these meals. Particularly, when no one else bid on these occasions.

ATTN: Pina Portanova
Universal Service Administrative Company
October 13, 2010
Page Three of Three

Simply because the Houston County Board attendees had a WAN/Internet RFP that had no language regarding VOLP services should these board employees have not accepted and eaten the meal when all in attendance accepted the meal. The Alabama Code specifically excludes meals of reasonable value and inexpensive gifts of \$100.00 value aggregate of \$250.00 per calendar year.

It appears the following was furnished on the following dates:

1. Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34; Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren;

2. Unknown date and location in 2008 at a value of approximately \$25.00 (Bob Blalock and David Sewell);

3. Unknown date and location in 2009 at a value of approximately \$35.00 (Bob Blalock, David Sewell and Ken Fondren); business lunch purchased by Trillion.

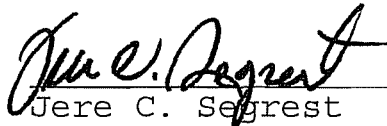
TOTAL VALUE OF ALL APPROXIMATELY \$107.00.

None of these exceed the reasonable value that can be accepted in any calendar year as stated in the Code of Alabama nor do any of the acceptances of these gifts violate any Houston County Board of Education policy or could any of these be considered unethical conduct. Please let me know if you need further information to reconsider these alleged violations.

Very truly yours,

HARDWICK, HAUSE, SEGREST & WALDING

BY:


Jere C. Segrest

JCS/dc

cc: Tim Pitchford
Bob Blalock

Date: September 13, 2010

Bob Blalock

HOUSTON COUNTY BOARD OF ED

Application Number(s): FY2010 Form 471# 722005 FRNs 1957944 and 1957954

Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1957944 and 1957954 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of meals, during the process you conducted to select a service provider to provide these goods and services from the service provider you selected. These gifts show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gift was in the form of meals:

Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren. Form 470# 379420000635182 was posted 8 days prior on November 7, 2007.

If the entire FRN(s) should not be denied and you have alternative information, please provide the supporting documentation

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Pina Portanova

USAC, Schools and Libraries Division

Phone: 973-581-5016

Fax: 973-599-6552

E-mail: pportan@sl.universalservice.org



Houston County Schools

404 West Washington St.
P.O. Drawer 1688
Dothan, AL 36302
(334) 792-8331

Tim Pitchford, Superintendent

September 24, 2010

Pina Portanova
Universal Service Administration
Schools & Libraries Division

RE: Response to USAC Denial Letter dated 9/13/10, Subject: FY2010 Form 471# 722005,
FRNs 1957944 and 1957954

Dear Ms. Portanova;

I am requesting USAC review the below information provided in response to your letter referenced above advising Houston County School District that USAC is preparing to deny Funding Year 2010 FRNs 1957944 and 1957954:

USAC's request:

"Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1957944 and 1957954 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of meals, during the process you conducted to select a service provider to provide these goods and services from the service provider you selected. These gifts show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gift was in the form of meals:

Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren. Form 470# 379420000635182 was posted 8 days prior on November 7, 2007."

Response:

I have found no wrong doing on the part of any Houston County Board of Education (HCBOE) employee with regards to these or any other funding request to USAC. The following paragraphs will demonstrate that HCBOE did not violate FCC regulations or state bid law requirements in conducting a fair and open competitive bid activity prior to awarding a contract to Trillion Partners for the WAN and Internet services associated FRNs 1957944 and 1957945. Therefore, request USAC reverse their decision to deny these applications and fund them in the next available funding Wave:

1. Houston County School District personnel did **not** engage in non-competitive bidding practices in violation of program rules since the meal/gift received by Houston County School District personnel on November 15, 2007 was not a “thing of value” under state law:
 - I have researched the board policy and the State of Alabama Department of Education policy regarding gifts to employees and found that no HCBOE employee violated any policy during any time period with regards to these funding requests. According to local policy and the Code of Alabama 1975, Code of Ethics for Public Officials, Employees, etc, (see Attachments 1, 2, & 3), no Houston County Board of Education staff member shall solicit or accept a gift/thing of value when such a gift could be construed to be a result of or a precondition to business transactions between the parties. No violation of this mandate occurred. The meal was provided without precondition as part of the Voice over IP demonstration as a hospitality to *all attendees*, which included personnel from other organizations. Additionally, nothing of value was provided to HCBOE personnel. According to the Code’s definition of a “thing of value”, hospitalities such as meals of a reasonable value as well as inexpensive gifts of \$100 value and aggregate value of \$250 per calendar year are **not considered to be a “thing of value” under Alabama law**. Therefore, as I stated previously, no HCBOE employee violated state or local policy. This was confirmed by our Board attorney who reviewed the Alabama Code as well as board policy and determined that nothing occurred that would have tainted the competitive bid process.
 - Additionally, we have been unable to locate any FCC rules, regulations, orders, etc., that provides the rule applicants are required to comply with as it relates to receiving meals/gifts from vendors. We are aware that the applicant certifies on both the Form 470 and 471 “that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s) or any representative... in connection with this request for services.” However, how does the FCC define a “thing of value”? In the absence of any FCC regulation, we defer to state law (Attachment 3) which does not consider meals of a reasonable value (less than \$100) to be a “thing of value”. Also, our following state law is consistent with SLD’s competitive bidding guidance which instructs applicants to “Follow all applicable state and local procurement laws,” which is exactly what HCBOE has done. We emphasize that the meals were provided to all attendees of the VoIP demonstration and not just our employees. This demonstration had absolutely nothing to do with our RFP for WAN/Internet Access as we had not included VoIP since we had no intention of implementing it at that time.

2. Houston County School District conducted a fair and open competitive bid activity and did **not** share any information with Trillion or any other vendor concerning the WAN and Internet solicitation. All information provided to vendors was provided in the Form 470 and RFP that were posted on our website and available to all potential bidders:
- The only reason Trillion representatives were on site on November 15, 2007 was to provide a demonstration of their Voice over IP (VoIP) solution. The timing of this demonstration was purely coincidental and had no bearing on the WAN and Internet bid activity. This demonstration and the subsequent lunch, provided by the vendor at the demonstration location, were attended by a number of personnel from other school systems as well as by David Sewell and Kenny Fondren from HCBOE. The purpose of the demonstration was so HCBOE could conduct additional market research on VoIP systems before making a determination on whether to transition the district's phone systems to a VoIP technology in the future. The VoIP requirement we were researching was not related to nor contained in the posted WAN and Internet Form 470 or RFP. These were two completely unrelated activities. In fact, this assertion is further supported by the fact that HCBOE conducted research on VoIP technology for a period of about two years and had discussions with at least three other vendors about their solutions as well as visited another school system to view another vendor's solution in their operational environment. Therefore, Trillion's presence at that time was part of an ongoing activity to collect information that had no bearing on the WAN and Internet solicitation that was posted.
 - While attending the demonstration and lunch, David Sewell and Kenny Fondren did not discuss the posted WAN and Internet solicitation with Trillion personnel as they've indicated in the attached statements (see Attachments 4 & 5). Therefore, Trillion was not provided any information about WAN and Internet solicitation prior to them submitting their bid for WAN and Internet services and Houston County School District personnel did **not** engage in non-competitive bidding practices in violation of program rules.

The information in this response was prepared by me, with information obtained, where applicable, from Mr. David Sewell and Mr. Kenny Fondren. Our E-rate consultant, Dynamic Strategies LLC, collected all response information provided by me and the stated parties, and organized the information in the above response format. Dynamic Strategies LLC also conducted the research in an attempt to find FCC regulations and provided the E-rate information about the Form 470 and 471 certifications contained in this response. All other information in this response originated from information provided by Houston County School District, either verbally or in writing. As requested, we have attached a copy of the consulting agreement (Attachment 6).

As we have demonstrated above, Houston County School District did not engage in non-competitive bidding practices in violation of program rules; nothing of value was accepted and no vendor was provided information that was not available to all vendors. Again, we request USAC reverse their decision to deny these applications and fund them in the next available funding Wave.

Please let me know if you require any further information. Thank you for the opportunity to provide additional information.

Sincerely,



Bob Blalock
Technology Coordinator
Houston County Board of Education
404 West Washington St.
Dothan, AL 36301
334-792-8331 Ext. 120
bblalock@hcboe.us

Attachments:

1. Houston County Board of Education Policy, 6.14.1 – Gifts
2. Code of Alabama, Section 36-25-7, Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.
3. Code of Alabama, Section 36-25-1, Definitions
4. Statement of Activities on November 15, 2007 from David Sewell
5. Statement of Activities on November 15, 2007 from Kenny Fondren
6. Dynamic Strategies, LLC Professional Services Agreement, dated 7/5/10

*Houston County Board of Education Policy***CHAPTER 6.00 – HUMAN RESOURCES****GIFTS****6.14.1**

- I. Staff members may, at their discretion, present personal gifts to student(s) on special occasions. Houston County School System staff members must exercise good taste and sound professional judgment when giving gifts to students. Gifts provided by staff members to students must not be elaborate or expensive.
- II. Houston County School System staff members shall not solicit or accept a gift, including money, from any source, when such a gift could be construed to be:
 - A. associated with the performance of school-related duties or activities;
 - B. a result of or a precondition to business transactions between the parties;
- III. Gifts of a nominal value on special occasions such as Valentine's Day, birthday, etc., are excluded from this provision.

STATUTORY AUTHORITY:**CODE OF ALABAMA
16-1-30****LAW(S) IMPLEMENTED:****CODE OF ALABAMA
16-11-9, 36-25-1, et al.****ALABAMA ADMINISTRATIVE PROCEDURE ACT:****HISTORY:**
ADOPTED: _____
REVISION DATE(S): _____
FORMERLY: NEW

Title 1 Determination of amount of injury or damage and entry of award for payment of damages generally.

Title 2
AGRICULTURE.

Title 3 ANIMALS.

Title 4 AVIATION.

Title 5 BANKS AND FINANCIAL INSTITUTIONS.

Title 6 CIVIL PRACTICE.

Title 7
COMMERCIAL CODE.

Title 8
COMMERCIAL LAW AND CONSUMER PROTECTION.

Title 9
CONSERVATION AND NATURAL RESOURCES.

Title 10
CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS.

Title 11 COUNTIES AND MUNICIPAL CORPORATIONS.

Title 12 COURTS.

Title 13A CRIMINAL CODE.

Title 14 CRIMINAL CORRECTIONAL

Section 36-25-7

Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.

(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.

(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.

(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(Acts 1973, No. 1056, p. 1699, §5; Acts 1975, No. 130, p. 603, §1; Acts 1995, No. 95-194, p. 269, §1.)

Section 36-25-1**Definitions.**

Whenever used in this chapter, the following words and terms shall have the following meanings:

- (1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
- (2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
- (3) CANDIDATE. This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.
- (4) COMMISSION. The State Ethics Commission.
- (5) COMPLAINT. Written allegation or allegations that a violation of this chapter has occurred.
- (6) COMPLAINANT. A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.
- (7) CONFIDENTIAL INFORMATION. A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.
- (8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:
 - a. A loan or financial transaction made or conducted in the ordinary course of business.
 - b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.
 - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.

(14) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(15) LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

(16) LEGISLATIVE BODY. The Senate of Alabama, the House of Representatives of Alabama, a county commission, city council, city commission, town council, or municipal council or commission, and any committee or subcommittee thereof.

(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying.

(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.
4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. A member of a legislative body on a matter which involves that person's official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
3. Reporters and editors while pursuing normal reportorial and editorial duties.
4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.
5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.
6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

(19) MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives an economic gain in an amount less than two hundred fifty dollars (\$250) or the governmental entity has an economic loss of less than two hundred fifty dollars (\$250).

(20) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(21) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist.

(22) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.

(25) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

(26) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(27) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(28) RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

(29) STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

(30) SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. Campaign contribution.

2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.

3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective

household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.

6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of a personal gift made to a public official or public employee from a spouse, intended spouse, dependent, adult child, sibling, parent, grandparent, uncle, aunt, nephews, nieces or cousins of the public official or public employee, except as otherwise provided by law.

d. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(32) VALUE. The fair market price of a like item if purchased by a private citizen.

(Acts 1973, No. 1056, p. 1699, §2; Acts 1975, No. 130, p. 603, §1; Acts 1979, No. 79-698, p. 1241, § 1; Acts 1982, No. 82-429, p. 677, § 1; Acts 1986, No. 86-321, p. 475, §1; Acts 1995, No. 95-194, p. 269, §1; Acts 1997, No. 97-651, p. 1217, §1.)



Houston County Schools

404 West Washington St.
Dothan, AL 36301
(334) 792-8331

Tim Pitchford, Superintendent

To whom it may Concern

On Nov. 15, 2007 I attended a demonstration of Voice over IP systems. This demonstration was hosted by Trillion Digital. It took place at Ashford High School with lunch provided by Trillion. It was attended by other school systems and other school personnel.

The demonstration dealt only with VoIP and no other items. The demonstration was of two types of phone systems. The first plan, which was very basic, connected only the school offices of the district to each other and the Central Office. The other connected all of the classrooms in the district and the offices of the district to the Central Office.

Trillion also showed the different types of phones which could be used with their VoIP systems. The WAN was not discussed only the types of phones, and the ways of purchasing the phones. Other school districts were in attendance, so others items were not discussed.

Thank You

David Sewell

A handwritten signature in cursive script that reads 'David Sewell'.

Meeting with Trillion

Date: 15 Nov 07

Location: Ashford High School

Subject: Voice over IP phones

The meeting at Ashford was setup as a demonstration of the phone systems available from Trillion. The system that Trillion demonstrated came in three models of phones. The most inexpensive model would allow for calls from the main office to each classroom. The high-end system allowed for calls from class to class, the main office and outside the school. After the demonstration, lunch was provided. No other information was discussed during the demonstration. No discussion of the pending WAN and Internet RFP took place during this routine demonstration.

Kenneth L. Fondren Jr.

A handwritten signature in black ink, reading "Kenneth L. Fondren Jr." in a cursive script.

Technology Specialist

Houston County Schools

*Houston County Board of Education Policy***CHAPTER 6.00 – HUMAN RESOURCES****GIFTS****6.14.1**

- I. Staff members may, at their discretion, present personal gifts to student(s) on special occasions. Houston County School System staff members must exercise good taste and sound professional judgment when giving gifts to students. Gifts provided by staff members to students must not be elaborate or expensive.
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 - A. associated with the performance of school-related duties or activities;
 - B. a result of or a precondition to business transactions between the parties;
- III. Gifts of a nominal value on special occasions such as Valentine's Day, birthday, etc., are excluded from this provision.

STATUTORY AUTHORITY:**CODE OF ALABAMA
16-1-30****LAW(S) IMPLEMENTED:****CODE OF ALABAMA
16-11-9, 36-25-1, et al.****ALABAMA ADMINISTRATIVE PROCEDURE ACT:****HISTORY:**
ADOPTED: _____
REVISION DATE(S): _____
FORMERLY: NEW

-----Original Message-----

From: sldnoreply@sl.universalservice.org [mailto:sldnoreply@sl.universalservice.org]

Sent: Monday, June 21, 2010 1:34 PM

To: erevels@dynamicstrategiesllc.com

Subject: RE: Initial Contact, case# 22-078241

Thank you for your inquiry. It is not listed word for word in an specific FCC order, rather it is outline in the certifications of various forms.

Here are the appropriate certifications from the forms:

Form 470

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational

purposes and will not be sold, resold or transferred in consideration for money or any other thing of value, except as permitted by

the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the entity or entities listed on this application have

not received anything of value or a promise of anything of value, other than services and equipment sought by means of this form,

from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

Form 471

29. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s). or any representative or agent thereof or any consultant in connection with this request for services.

37. I certify that the non-discount portion of the costs for eligible services will not be paid by the service provider. The pre-discount costs of eligible services featured on this Form 471 are net of any rebates or discounts offered by the service provider. I acknowledge that, for the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.

And here is the appropriate paragraph from the website guidance (Free Services Advisory):

An applicant may not receive free or discounted services from a service provider that have the effect of providing a discount level to the applicant greater than the discount allowed for Schools and Libraries support.

Applicants and service providers are prohibited from using Schools and Libraries support to subsidize the procurement of ineligible or unrequested products and services or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.

Basic principles to guide applicants and service providers include the following:

- The value of all price reductions, promotional offers, and "free" products or services must be deducted from the pre-discount cost of services indicated in funding requests.
- Costs, trade-in allowances, and discounts must be fairly and appropriately derived. For example, the cost for eligible components may not be inflated in order to compensate for discounts of other components not included in funding requests.
- A proportionate cost allocation is required between eligible and ineligible components.

If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates: <http://www.sl.universalservice.org>

Thank you,
Schools and Libraries Division
Universal Service Administrative Company

-----Original Message-----

From: erevels@dynamicstrategiesllc.com
Subject: Initial Contact

[FirstName]=Elizabeth
[LastName]=Revels
[JobTitle]=
[EmailAddress]=erevels@dynamicstrategiesllc.com
[WorkPhone]=3342216124
[FaxPhone]=
[PreviousCaseNumber]=0

[FormType]=Other
[Owner]=TCSB
[DateSubmitted]=6/17/2010 10:20:56 AM
[AttachmentFlag]=N[Question2]=This is a follow-up question to a closed case number for which I never received a response: Case #22-075116 In the USAC's Fall 2009 Training - "Issues in Competitive Bidding" Slide # 17 references FCC rules that may be in violation if a gift is given or received. If possible please provide the FCC/USAC order number or regulation number that this guidance is based on. We appreciate your timely response as this issue is time sensitive, thank you very much for your assistance.

=====

Email scanned by PC Tools - No viruses or spyware found.



ATTACHMENT 5-16 (3 pages)

Step 6: Free Services Advisory

An applicant may not receive free or discounted services from a service provider that have the effect of providing a discount level to the applicant greater than the discount allowed for Schools and Libraries support.

Applicants and service providers are prohibited from using Schools and Libraries support to subsidize the procurement of ineligible or unrequested products and services or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.

Basic principles to guide applicants and service providers include the following:

- The value of all price reductions, promotional offers, and "free" products or services must be deducted from the pre-discount cost of services indicated in funding requests.
- Costs, trade-in allowances, and discounts must be fairly and appropriately derived. For example, the cost for eligible components may not be inflated in order to compensate for discounts of other components not included in funding requests.
- A proportionate cost allocation is required between eligible and ineligible components.

Funding requests or applications inconsistent with these provisions are contrary to program rules and will be denied. The "30% Rule," which provides that a funding request can continue to be processed if the value of the ineligible products and services is less than 30% of the total amount of the funding request, does not apply in cases of serious violations of program rules. In addition, applicants and service providers are cautioned that willful violations of program rules can result in criminal penalties.

The examples that follow provide further details of **prohibited** practices.

Example 1: Applicant receives a discount for services received.

Assume that a service provider's regular price for a service is \$100, but that it will offer the applicant a 20% price reduction. The funding request for this service must specify \$80 as the pre-discount cost, and the applicant must pay its share of this \$80 cost. It is a violation of program rules to submit a funding request in excess of the actual cost expected to be charged and paid.

Example 2: A discounted or free service is provided in exchange for applicant purchase of an eligible service.

Assume that a service provider offers to provide an eligible service for \$200, and also offers a 60% discount on a \$300 ineligible service when both the eligible and ineligible service are purchased together. (The 60% discount means that the applicant would need to pay only 40% of the usual \$300 cost.) Because such an arrangement may have the effect of using program support to subsidize ineligible services, any discounts (or free services) must be allocated proportionately. For this example, the pre-discount cost of the eligible service should be shown as \$128, as illustrated in the following calculations.

Quoted cost for both services: $\$200 + (\$300 \times 40\%) = \$320$

Usual cost for both services: $\$200 + \$300 = \$500$

Percent of usual cost to be paid: $\$320 / \$500 = 64\%$

Proportional cost of eligible service: $\$200 \times 64\% = \128

Example 3: A service provider commits to providing additional free or discounted products or services as a sales inducement.

Assume that a service provider's successful bid includes an offer to provide five "free" personal computers, worth \$6,000. Program rules are violated if the funding request does not reduce the pre-discount cost by the fair market value of the five computers, or alternatively cost-allocate the eligible and ineligible components.

Applicants must select the most cost-effective solution and may not consider the benefits of ineligible components in the bid evaluation unless: those ineligible components are allocated out of the funding request; the full package is a reasonable business bundling; and the prices of the eligible components are reasonable (e.g., meet the conditions as provided in Cost Allocation Guidelines for Products and Services).

Some service providers will donate products and services to applicants. Program rules do not prohibit that practice as long as the donation is not provided as a sales inducement or, if the donation is in fact tied to a bid for services, the value of the donated products is subtracted from the pre-discount cost included in the funding request.

Example 4: A Request for Proposal specifies both eligible and ineligible services and seeks only a single price for the mixed-eligibility bundle.

Assume that an applicant issues a Request for Proposal (RFP) that seeks Internet access (eligible), caching service (ineligible), and filtering (ineligible). Responses received provide only a single cost for the bundled package.

A funding request that provides only a single cost for both eligible and ineligible components cannot be approved under program rules. Eligible and ineligible products and services must have separated costs, so that the ineligible components can be subtracted from funding requests.

A limited exception exists to the requirement for separated pricing. In some cases, an eligible product or service can include ineligible components on an ancillary basis, and the full package can be eligible for support if certain conditions are met. For example, if a service provider's standard Internet access service also provides caching and filtering as standard components, and this offering is the most cost-effective solution without considering the ineligible features, then the **full** cost can be submitted as the pre-discount cost in a funding request. The distinction in this case is that the added features are ancillary, they are not specifically requested by the applicant, and they are a part of the standard Internet access package from the service provider.

See [Cost Allocation Guidelines for Products and Services](#).

Example 5: A service provider offers a discount for prompt payment.

Assume that an arrangement between a service provider and an applicant is for a service with a cost of \$1,000, but that the service provider offers a 10% discount if the applicant portion is paid within 30 days. The amount eligible for funding in this case is the net cost to the applicant for payment within 30 days, or \$900. Applicants must choose the most cost-effective solution, and certify to USAC that funds are on hand to pay the applicant share. Therefore, applicants are expected to take advantage of payment discounts, when offered, and must seek support only toward the actual costs expected to be paid.

Example 6: The applicant uses funds or a credit received from an equipment trade-in to pay for the applicant portion of a funding request. The trade-in amount is in excess of fair market value.

Assume that an applicant that qualifies for an 80% discount seeks an eligible technology upgrade that costs \$100,000. Therefore, the applicant share for this upgrade is \$20,000. The applicant intends to pay \$5,000 for its share, plus receive a \$15,000 trade-in from the service provider for components owned by the applicant that will not be needed once the upgrade is complete. The components have a fair market value of \$7,000.

The effect of this arrangement is that the applicant gets a larger discount than it is entitled to. That is, it would pay or transfer property with a combined value of \$12,000, which is less than what is appropriate for the applicant's 20% share of the total cost. Therefore, the funding request is in violation of program rules and would be denied.

As a more general matter regarding trade-in allowances, if the components involved with the trade-in were obtained using discounts through the Schools and Libraries Program, the funds or credit from the trade-in can only be used to reduce the pre-discount cost of new components to be obtained.

The only way that a trade-in can be used to reduce the applicant share is if (1) the components involved in the trade-in were not originally obtained with discounts from the Schools and Libraries Program, and (2) the amount for the trade-in is clearly based on fair market value. If the trade-in amount is above fair market value, then the pre-discount cost must be reduced by the portion of the trade-in allowance that is in excess of fair market value.

Additional information about equipment trade-ins is available in [Frequently Asked Questions About Eligibility of Products and Services](#).

Example 7: A service provider donates funds to a grant organization, earmarked for an applicant.

Assume that an applicant that qualifies for an 80% discount seeks an eligible technology upgrade that costs \$100,000. The service provider donates \$10,000 to a grant organization, with a stipulation for how the funds are to be disbursed in a way that violates program rules. For example, the stipulation could indicate that funds are to be disbursed to a particular school that has a funding request under the Schools and Libraries Program that cites that service provider.

Because of the additional transaction involving the grant, the cost of the service is not truly \$100,000. A funding request for the full \$100,000 pre-discount cost is a violation of program rules.

Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants and organizations are independent of the service provider.

Additional requirements and restrictions

The examples provided here are representative. Similar arrangements that effectively subsidize procurements or provide greater discounts than the applicant is entitled would also be violations of program rules.

Any party with a potential financial interest in the Schools and Libraries Program is subject to the guidance provided. For example, a subcontractor to a service provider may not engage in the prohibited activities described here.

Applicants are required to maintain records of the competitive bidding process including all bids obtained and the factors used in evaluating the responses and the determination of the winning bidder. These records must be provided to USAC or auditors on request.

Step 5 Calculate the Discount Level

Step 7 Submit Your Application for Program
Support

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From: sldnoreply@sl.universalservice.org
Sent: Friday, September 17, 2010 2:19 PM
To: cmclaughlin@dynamicstrategiesllc.com
Subject: FCC Reg guidance concereng meals, gifts, etc. - RE: Initial Contact, Case# 22-109410

Thank you for your inquiry. You can refer to the information on our website regarding the fair and open competitive bidding (<http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>), as well as the free services advisory (<http://www.usac.org/sl/applicants/step06/free-services-advisory.aspx>). As you stated, they also certify on the Forms 470 and 471 that they will not receive anything of value. Additionally, more specific information appears in the FCC order 10-83 which can be found on our website here: <http://www.usac.org/about/tools/fcc-orders/>

If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates: <http://www.usac.org/sl>

Thank you,
Schools and Libraries Division
Universal Service Administrative Company

-----Original Message-----

From: cmclaughlin@dynamicstrategiesllc.com
Subject: Initial Contact

[FirstName]=Corrina
[LastName]=McLaughlin
[JobTitle]=
[EmailAddress]=cmclaughlin@dynamicstrategiesllc.com
[WorkPhone]=3342216124
[FaxPhone]=3345146865
[PreviousCaseNumber]=0

[FormType]=Other
[Owner]=TCSB
[DateSubmitted]=9/17/2010 2:05:11 PM

[AttachmentFlag]=N[Question2]=Request additional information concerning the regulatory basis of a recent FCDL denial issued in FY2009's Wave 66 to BEN 128110, for FRN 1786824 and 1786841. The following SLD explanation was provided in the FCDL: "This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied."

This denial resulted from a Special Compliance Review that according to the questions received from SLD during the review was related to the applicant accepting a meal from the service provider. We are in the process of preparing the appeal for Houston Co. School District and require additional information concerning the basis of the denial. The denial decision does not cite the FCC regulation, rule, order, etc., that was violated and we have been unable to locate in FCC's regulations any reference to the receipt of gifts, meals, etc. to understand exactly what was violated. We are aware that the applicant signs the 470 and 471 certifying they "have not received anything of value or a promise of anything of value, other than services and equipment requested under this form". However, what FCC regulation is this requirement based on and what is the FCC's definition of a "thing of value"? Request USAC provide the FCC regulation, order, rule, etc. that was violated that caused this denial so that Houston Co. School District will have all the information used to deny them the funding and can properly address the violation in their appeal. Thank you in advance for your assistance.



Step 3: Run an Open and Fair Competitive Bidding Process

Form 470 Information

Applicants must ensure an open and fair competitive bidding process to receive Schools and Libraries support.

The competitive bidding process begins when the *Description of Services Requested and Certification Form* (Form 470) is posted to USAC's website. In Form 470, the applicant describes the types of products and services desired and for which bids are accepted. The applicant must conduct a fair and open competitive procurement in which a service provider is selected and products and/or services are ordered and reported on the *Services Ordered and Certification Form* (Form 471).

The applicant must be ready to accept bids once the Form 470 is posted on the USAC website. The applicant also must take an affirmative role in evaluating such bids. Applicants may not delegate the evaluation role to anyone associated with a service provider.

Request for Proposals. A Request for Proposals (RFP) is not required, but it is a good idea to have one. An RFP describes the project undertaken, with sufficient details to inform potential bidders of the scope, location, and any other requirements for the project. If an RFP exists, the applicant must indicate on Form 470 where the RFP is available, whether on a website or from a contact person. If state or local procurement regulations impose additional requirements, such as eligibility requirements for bidders, these requirements must also be noted on Form 470.

Competitive Bidding. The goal of competitive bidding is to have as many bidders as possible respond to a Form 470, RFP, or other solicitation method so that the applicant can receive better service and lower prices.

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them. The Form 470, RFP, or other solicitation method should be clear about the products, services, and quantities the applicant is seeking and must be based directly on the applicant's technology plan. In addition, the applicant must avoid using generic or encyclopedic service descriptions on their Form 470, RFP, or other solicitation method. Using a generic RFP or Form 470 does not comply with Federal Communications Commission (FCC) competitive bidding requirements. Also, using an encyclopedic RFP or Form 470 does not comply with FCC competitive bidding requirements. Such generic or encyclopedic requests will inhibit service providers from composing a responsive bid without additional information or insight into the applicant's bid solicitation.

- Examples of a generic Form 470 or service description may include "all eligible services," "any E-Rate products," or "all telecom services".
- Examples of an "encyclopedic" service description are replications of the entire Eligible Services List or a "grocery" list of services that does not cover a specific service or product.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. For example, a conflict of interest exists when the applicant's consultant is associated with a service provider that is selected and is involved in determining the services sought by the applicant and the selection of the applicant's service provider(s).

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Step 3: Open a Competitive Bidding Process (Form 470)

Applicants must file the *Description of Services Requested and Certification Form* (Form 470) to begin the competitive process and must ensure an open and fair competitive bidding process for specific products.

Applicants must file a new Form 470 each funding year for requests for tariffed or month-to-month services and for new contractual services. When the Form 470 is filed, USAC will make it available to interested service providers by posting it to the USAC website.

Applicants **must**:

- Describe specific services or functions for support
- Identify the correct category of services: telecommunications, Internet access, internal connections, or basic maintenance of internal connections
- Identify recipients of services for support
- Follow all applicable state and local procurement laws
- Wait 28 days after the Form 470 is posted to the USAC website or after public availability of your Request for Proposals (RFP), whichever is later, before selecting a vendor or executing a contract (see Step 4: Select the Most Cost-Effective Service Provider)

Applicants **may**:

- Use RFPs or other solicitation methods tailored to specific needs and circumstances in addition to the required Form 470.

The Form 470 must be completed by the entity that will negotiate for eligible products and services with potential service providers. A service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of the entity's Form 470.

A new Form 470 is **not required** if an applicant intends to seek discounts on services provided under a multi-year contract executed under a posted Form 470 in a prior funding year.

Step 2 Develop a Technology Plan

Step 4 Select a Service Provider Process

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Gifts

- FCC requires fair and open competitive bidding; gifts could inhibit this
- If acceptable under state/local regulations, could still be in violation of FCC rules
- USAC will review case by case
- Appearance of violations can cause more reviews and delay commitments

Gifts

- Meals, travel, entertainment etc offered by service provider to an applicant
 - Gifts offered and/or received
- Know and follow your state and local rules regarding acceptance of gifts (limits, timeframes, etc)
- Know and follow your school/library gift policies